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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION
I. D. #5318
RESOLUTION E-3973
3/15/06

R E S O L U T I O N

Resolution E-3973. PG&E

By Advice Letter 2752-E filed on 12/19/05.

SUMMARY

This Resolution approves PG&E's new Form 79-1048 – Agreement for Unmetered Low Wattage Equipment Connected to Customer-Owned Street Light Facilities (Agreement) with minor modifications. PG&E shall file within 10 days a Supplement to its AL to clarify the language and explain the requirements for connection to series streetlighting circuits.

BACKGROUND

Unmetered service is provided by utilities for certain small constant loads and consistent hours of operation at 100% load factor in situations where the load is impractical to meter. This is per Preliminary Statement and applies to utility or customer-owned street lighting under tariffs. In the past, utilities executed individual agreements with governments owning street lighting to allow attachment of unmetered small third party loads to the street lighting facilities. With the proliferation of WiFi antennae, PG&E is now proposing a filed Form - Agreement for Unmetered Low Wattage Equipment Connected to Customer-Owned Street Light Facilities.

NOTICE

Notice of AL 2752-E was made by publication in the Commission's Daily Calendar on December 21, 2005. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

PG&E's Advice Letter AL 2752-E was timely protested by Marine General Services Agency (MGSA).

PG&E responded to the protest of MGSA on January 17, 2006.

The following is a summary of the issues raised in the protest.

DISCUSSION

Energy Division has reviewed MGSA's protest and PG&E's response.

MGSA is not generally opposed to the proposed form Agreement, however has concerns to three paragraphs of the Agreement.

Paragraph 5:

This paragraph imposes liability for retroactive payment of energy on the basis of Agreement Paragraph 3 and consistent with Rules 17, 17.1 and 17.2 in case electric load was not accurately reported to PG&E. The Agreement requests manufacturer's documented equipment rating and PG&E may test equipment for verification.

MGSA asserts that this paragraph imposes potential liability due to load miscalculation and that PG&E should not permit service until it has verified the load.

Paragraph 7:

This paragraph places the ultimate responsibility for bill payment and other conditions of the Agreement on the owner of the street lighting facility, regardless if payments are managed and the low wattage equipment connected to streetlights are owned by third parties. It states that PG&E is only responsible up to the customer's street lighting service delivery point.

MSG strongly objects to the responsibility of local government agencies for energy payments of third parties and other conditions of the Agreement. They maintain that third parties are billed under tariff A1 and therefore local agencies should not act as guarantor to PG&E for energy payments. This is not stated in the Public Utilities Code.

Paragraph 20:

This is an extensive indemnity clause imposed on the customer for PG&E and its personnel and agents against loss, damage, expense and liability resulting from injury or death of any person, or loss to property arising out of performance of the Agreement.

MGSA believes that there is no basis for this paragraph and that PG&E's property cannot be damaged through the installation of the low wattage equipment. MGSA maintains that typically a customer needs no indemnity for PG&E service.

PG&E Responses

Paragraph 5:

PG&E refers to Rules 17, 17.1 and 17.2 which spell out the conditions for Adjustment of Bills for Meter and Billing Errors and Unauthorized Use. PG&E acknowledges that potential liability exists from miscalculation of load, but that this applies to all load, metered or not and under this Agreement or not. Paragraph language is standard and has been approved by the Commission earlier. Paragraph 2a contains the customer's obligation to present the most accurate load information for PG&E to agree and bill upon.

Paragraph 7:

PG&E points out that that the local agency (in many cases) is the owner of the streetlights and therefore is responsible for payment of the energy use, regardless if it has a third party manage the bills or authorized a third party to attach low wattage equipment to streetlights. This is analogous to a master-metered situation under Rule 18, but without meter. Under Rule 18 a master-metered customer pays the entire energy bill and portions out its costs within a lease or rental agreement, but without specific energy details. This Agreement mimics Rule 18 and reduces costs to cities, vendors and PG&E. PG&E is not responsible for third party actions on a customer's houseline (in this case the streetlight customer-owned circuit) and concerns about payments would more appropriately be addressed in the streetlight customer's contract with the third party. In the alternate, the third party may directly connect to PG&E under the Agreement for Unmetered Electric Service (Form 79-972).

Paragraph 20:

PG&E responds that the indemnity provisions in this paragraph are appropriate because the low wattage equipment may be placed on customer-owned (e.g. city) streetlights attached to PG&E-owned poles or near other PG&E-owned equipment. The indemnity provision is intended to allocate to the customer the risk of any harm resulting from the customer's, or its third party's on its behalf, operation and maintenance of such low wattage equipment. The form of the indemnity provision has been used in many previous agreements approved by the Commission, including PG&E's Customer-Owned Streetlights Pole Contact Agreement, Form 79-938, approved effective March 6, 1991 and most recently the identical indemnity language in Form 79-1049, approved January 11, 2006.

Discussion

Paragraphs 5 and 7:

The proposed Agreement is with the streetlight customer (e.g. a city) and not the third party (e.g. WiFi service provider). PG&E is not obligated to verify and be responsible for third party load accuracy and takes the customer's information of the load at face value on Form 79-1048, until proven otherwise. This is similar to the Agreement for Unmetered Electrical Service, Form 79-972, Effective May 3, 2003. By AL 2360-E, this agreement was changed for a one time limited attachment of third party transit shelter lighting to existing customer-owned streetlights. The agreement made the streetlight customer (e.g. city) responsible for the energy use connected to the already unmetered circuit if the transit shelter customer (e.g. advertising company) of record abandons the shelters, successfully enters bankruptcy or otherwise fails to take responsibility for energy payments.

Similar to the proposed Paragraph 5, the existing Agreement Form 79-972, Paragraphs 5 and 6 provide for PG&E to audit and test equipment at its discretion and bill per Rules 17, 17.1 and 17.2. The liability for energy use is essentially the same, if paid as used or retroactively, if miscalculated. So, there is no additional responsibility.

We agree with PG&E that assurance of accurate load reporting and energy payments by the third party would be more appropriately addressed in the street lighting customer's contract with that party.

Paragraph 20:

We agree with PG&E that third party equipment attachments to street lighting circuits may involve physical mounting to or near PG&E owned poles or equipment that supports customer streetlights. This is analogous to the Customer-owned Streetlight Contact situation and the identical wording of this paragraph to PG&E's Customer-Owned Streetlights Pole Contact Agreement, Form 79-938, is appropriate.

Modifications

Energy Division staff proposes the following modifications to the agreement for clarifications:

1. Attachment A to the new Form 79-1048 requires the customer to show the "Rating %" of the Equipment, whereas Agreement Paragraph 3 bases the charges on the "watt rating" of the equipment. It is not clear if those terms are equivalent, and if so, why the "Rating %" is needed for billing. A clarification is required.
2. Attachment A also requires the customer to enter the "Operating hours", whereas the Form 79-1048 bases the kWh charged on the connection to a photo control or 24 hr operation. It is not clear why "Operating hours" is asked for, rather than the presence of photo control. A clarification is required.
3. Since different types of equipment are covered by one agreement, Attachment A should clarify that each "Type" requires a separate Attachment A.
4. Some locations employ series connected street lighting and the requirements for equipment connected to such configuration should be explained in the agreement.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g) (2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for

comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. The proliferation of requests from customers (cities) to utilities to allow third-party unmetered low wattage WiFi antennae to be served from customer-owned streetlighting circuits prompted PG&E to propose a new form agreement.
2. The proposed agreement is with the streetlighting customer (e.g. city), not the third party (e.g. WiFi service provider).
3. Utilities are not obligated to test customer equipment for load verification for billing purposes.
4. Utilities have no contract for payment of charges by third parties (e.g. vendors to cities) using customers' circuits (e.g. city-owned) or managing customers' bills, regardless if unmetered or submetered.
5. The indemnification clause in the proposed agreement is identical to the agreement for Customer-Owned Streetlights Pole Contact which is a similar situation.
6. The proposed agreement needs some clarification of terminology and the requirements for equipment connection to series streetlighting circuits.

THEREFORE IT IS ORDERED THAT:

1. The request of PG&E to file a new Form 79-1048 – Agreement for Unmetered Low Wattage Equipment Connected to Customer-Owned Street Light Facilities, is approved with minor modifications as elaborated above.
2. PG&E shall file a Supplement to its AL within 10 days to incorporate the requested modifications.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on 3/15/06 the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director